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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

WILLIAM LAWRENCE FOTI,

Defendant and Appellant.

D053654

(Super. Ct. No. SCD208662)

APPEAL from a judgment of the Superior Court of San Diego County, David M. Gill and Margie G. Woods, Judges. Affirmed.

After denial of his motion to suppress evidence, William Lawrence Foti pleaded guilty to possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a)) and providing a false name to a police officer, a misdemeanor (Pen. Code,<sup>1</sup> § 148.9). The

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<sup>1</sup> Further statutory references are to the Penal Code unless otherwise specified.

trial court suspended imposition of sentence and placed Foti on Proposition 36 probation for three years. (See § 1210.)<sup>2</sup>

## FACTS

On August 24, 2007, San Diego Police Officer Hubert Scallon and Detective Michael Brogdon were working together on a crime suppression team that was targeting illicit drug sales taking place at residences. Brogdon, who was not in uniform and was driving an unmarked vehicle, observed Foti driving a white Dodge Ram pickup truck and failing to signal turns he made. Brogdon radioed this information to Scallon, who was in uniform and driving a marked patrol vehicle. Brogdon followed Foti to the 3200 block of Mobley Street, where Foti parked the truck. According to Brogdon, the police had received complaints from numerous citizens about the high volume of pedestrian and vehicular traffic coming and going from a residence on Mobley Street, and he and other officers had made numerous drug-related arrests outside the residence. Within five minutes, Foti returned to his truck carrying a pair of boots. After Foti drove away, Brogdon instructed Scallon to stop Foti's vehicle.

Scallon activated the emergency overhead lights on his patrol vehicle and signaled to Foti to pull over. Foti drove into a parking lot on Aero drive. Brogdon also parked in

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<sup>2</sup> Proposition 36, the Substance Abuse and Crime Prevention Act of 2000 (Act) was adopted by voters on November 7, 2000. The Act took effect on July 1, 2001, and is codified at Penal Code sections 1210, 1210.1, 3063.1, and division 10.8 (commencing with § 11999.4) of the Health and Safety Code. Prior to sentencing, the trial court granted the defense motion to dismiss the misdemeanor count under section 1385 in order to make Foti eligible for Proposition 36. (§ 1210.1, subd. (b)(2).) (See *People v. Orabuena* (2004) 116 Cal.App.4th 84, 96 [misdemeanor allegation is action subject to dismissal in order to render defendant eligible for drug treatment under Proposition 36].)

the parking lot. Scallon walked over to the driver's side of the pickup truck, and Brogdon walked over to the passenger side. Scallon asked Foti for his driver's license and vehicle registration. Foti said he did not have his driver's license with him. Foti handed Scallon a proof of insurance card and a Visa card, both in the name of David Foti, a brother of his. Scallon asked Foti for his date of birth and social security number; Foti said he did not know them. At this point, Brogdon approached the driver's side of the truck and asked Foti if his driver's license was suspended or revoked. When Foti replied no, Brogdon handcuffed him. Brogdon said Foti was sweating profusely and was extremely hyperactive or fidgety. Brogdon also said Foti's clothes were loose fitting and he was wearing a shirt that covered his waistband area. Brogdon said Foti's appearance, coupled with his lack of identification and his recent visit to a residence where suspected drug activity took place, raised safety concerns because individuals involved in illicit drugs frequently carry weapons.

Scallon conducted a patdown search of Foti. Scallon felt a large item in the coin pocket of Foti's pants and immediately suspected it was a baggie of methamphetamine based on his experience making drug arrests and Foti's physical symptoms. Scallon told Foti that he believed the item he felt was a baggie of methamphetamine. After Foti did not respond, Scallon removed a baggie containing 1.56 grams of methamphetamine from Foti's coin pocket.

## DISCUSSION

Appointed appellate counsel has filed a brief setting forth evidence in the superior court. Counsel presents no argument for reversal, but asks that this court review the

record for error as mandated by *People v. Wende* (1979) 25 Cal.3d 436. Pursuant to *Anders v. California* (1967) 386 U.S. 738, counsel refers to as possible, but not arguable, issues: (1) whether the traffic stop was lawful; (2) whether there was sufficient reason to conduct a patdown search and whether the patdown search was properly conducted; and (3) whether there was probable cause for the arrest.

We granted Foti permission to file a brief on his own behalf. He has not responded.

A review of the record pursuant to *People v. Wende, supra*, 25 Cal.3d 436 and *Anders v. California, supra*, 386 U.S. 738, including the possible issues referred to by appellate counsel, has disclosed no reasonably arguable appellate issue. Competent counsel has represented Foti on this appeal.

#### DISPOSITION

The judgment is affirmed.

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NARES, J.

WE CONCUR:

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BENKE, Acting P. J.

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HUFFMAN, J.